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death, is considered by the courts as disease, whereas death caused from blood poisoning caused by an abrasion on the toe as a result of a tight shoe, is accidental, (citing *Western Commercial Travelers Ass'n.* v. *Smith,* 85 Fed. 401, 40 L. R. A. 653,) whereas the distinction "if it exists, is so subtile as not to be capable of expression in language intelligible to any one but a physician." In the principal case the deceased had had "auto-intoxication"—a disease which may come from an injury or otherwise—about a month before and was attacked again immediately after this fall. The plaintiff, however, failed to prove that the fall actually caused the renewed attack, there being a possibility that the disease may have been a natural recurrence, regardless of any accident. The case seems to have been lost more through a failure of proof than any contract rule of law, as under the authority of *Freeman* v. *Association,* supra, the fact that the deceased was particularly susceptible to the disease would not have prevented a recovery were it shown that the accident actually caused this attack.

JUDGMENTS—COLLATERAL ATTACK FOR FRAUD.—H., a director of the defendant lumber corporation, became an accommodation endorser on some of its notes; having been obliged to pay the amount of the notes, he sued the defendant corporation for the sum so paid and recovered judgment by confession of its president. Subsequently the plaintiff, also a creditor of the defendant lumber company, recovered a judgment upon his claim. The latter now seeks by this suit in equity against the lumber company, H. and others to have the judgment in favor of H. against the lumber company subordinated to his own, charging H. with fraud in procuring the same. The alleged fraud consisted of delay caused to plaintiff in pursuit of his remedy by H's assurance that he would be taken care of. *Held,* the court having had jurisdiction, its judgment could not be attacked collaterally by plaintiff and that the evidence failed to establish fraud on the part of H. *Irvine* v. *Randolph Lumber Corporation et al.* (1910), — Va. —, 69 S. E. 350.

It is undoubtedly the general rule that parties to an action will not be permitted to assail the judgment collaterally for fraud because, having had their day in court, they are estopped. FREEMAN, JUDG., §§ 334 and 335; *Randolph* v. *King,* Fed. Cas. No. 11560 (2 Bond 104); *Boston etc. R. R. Corp.* v. *Sparhawk,* 1 Allen 448, 79 Am. Dec. 750. But a contrary doctrine seems to have found favor with some courts, *Hall* v. *Hamlin,* 2 Watts 354; *Phelps* v. *Benson,* 161 Pa. 418, 29 Atl. 86. That a judgment may be collaterally impeached by strangers at any time on the ground of fraud or collusion is a doctrine which must be accepted as settled by a long and unbroken chain of authorities, *Greene* v. *Greene,* 2 Gray 361; *Michaels* v. *Post,* 21 Wall. 398, 427; but the proposition as stated above must be taken subject to certain limitations, for the right to attack a judgment collaterally is given only to those strangers who, if the judgment is allowed full operation and effect, would be injured in some pre-existing right, *Simpson* v. *Kimberlin,* 12 Kan. 579; *Secrist* v. *Green,* 3 Wall. 744, 18 L. Ed. 153.

JUDGMENTS—NECESSITY FOR SEAL ON PROCESS.—Rev. St. 1895, Art. 1447 of Tex. provides that all writs and processes shall be attested by the clerk

with the seal of the court impressed thereon. Plaintiff brought this action in the District Court of Texas on a promissory note. The citations issued to defendants were impressed with the seal of the County Court instead of the District Court, but the same individual was clerk of both courts. *Held,* citations issued out of the District Court impressed with the seal of the County Court were void and would not sustain a default judgment, *Hardy Oil Co. et al.* v. *Markham State Bank* (1910), — Tex. Civ. App. —, 131 S. W. 440.

The decisions in different states determining the effect to be given constitutional and statutory requirements as to the forms of writs and processes are quite divergent. Two doctrines concerning this question appear to have acquired a more or less permanent footing in the various courts. The doctrine in accordance with which the principal case was decided boasts of the support of many courts in this country. They in effect hold that statutes requiring all writs and processes to be authenticated by the seal of the court out of which they issue are mandatory and that writs or summons issued without a seal are void. *Dexter* v. *Cochran,* 17 Kan. 447; *Weaver* v. *Peasley,* 163 Ill. 251, 54 Am. St. Rep. 469. The summons or other process issued without a seal being void, an amendment thereof is necessarily impossible. *Sidwell* v. *Schumacher,* 99 Ill. 426. These courts would seem to hold that the issuance of a citation without a seal is a jurisdictional defect and therefore nullifies all subsequent proceedings, *Choate* v. *Spencer,* 13 Mont. 127, 40 Am. St. Rep. 425. It is assumed by those courts supporting the second doctrine that an omission of a seal is an omission of something relating to mere form, and that consequently the process is not rendered void but is merely voidable, *Brewer* v. *Sibley,* 13 Metc. 175, therefore they permit such voidable process to be amended by affixing the correct seal, *People* v. *Dunning,* 1 Wend. 16. Quite a number of the latter courts hold that on the failure of the defendant to object at the proper time and in the proper manner, as by plea in abatement or motion, he will be deemed to have waived the defect, *Ripley* v. *Warren,* 2 Pick. 591. Certainly an ordinary individual should not be condemned if he has not acquired such a refined sense of justice as will enable him to view with perfect equanimity the decision of the court wherein such formal and puerile considerations as the failure of a clerk to pick up the right seal and impress it on the summons are permitted to outweigh and defeat the substantial rights and equities of the litigant.

MASTER AND SERVANT—APPLIANCES—REASONABLE SAFETY.—Action for the death of a miner caused by a defective gear hoist. The trial court admitted evidence to show a common custom in the district of using hoists with certain appliances absent from the particular hoist, to be considered by the jury not as conclusive, but as an aid to determine whether the hoist was reasonably safe. *Held,* the evidence was properly admitted. *Rice* v. *Van Why* (1910), — Colo. —, 111 Pac. 599.

This case was twice before the Supreme Court of Colorado. The facts furnish a very good opportunity for the application of a doctrine, which is denied by some courts, viz. the determination of the nature or tendency of an